



# TOWN OF GREENWICH

Town Hall, 101 Field Point Road, Greenwich CT 06830

## **Board of Ethics**

Peter Tesei, 1<sup>st</sup> Selectman, Ex Officio Member  
Paul A. deBary, Chairman  
Robert V. Sisca, Secretary  
Jane A. Finn, Member,  
Robert F. Grele, Member  
John Margenot, Member

## **Annual Report of the Board of Ethics**

### **Fiscal Year 2011-2012**

Pursuant to Section 2.12 (c) of the Greenwich Code of Ethics, the Board of Ethics is required to prepare and submit an annual report of its activities to the Board of Selectmen and the Representative Town Meeting. The Board is pleased to submit the following report for the fiscal year ending June 30, 2012.

### **Executive Summary**

The 2011-2012 Fiscal Year has been a period of progress in some areas and increasing concerns in others. There were continuing efforts by the Town to clarify its ethical standards and improve awareness of ethical issues. The Board of Ethics supported these efforts by updating its pages on the Town website to keep them current and make it easier to obtain relevant forms and other information and has been pleased to see indications of increasing use of these resources.

The Board also reached out to provide information in a more traditional way, initiating the production of paperback and e-book editions of the reports of the Board's activities since inception by arranging for the reports to be copy edited. As of the date of this report, sixty copies of the final published set of reports have been delivered for use by various Town officials. The publication has also been registered with the Library of Congress, so that it will be able to be cataloged by local libraries. Steps have also been taken to make the reports available in print and electronic format on a low cost or no cost basis through traditional media distribution channels.

The 2011-2012 Fiscal Year also saw the initiation of a quarterly ethics newsletter, which will be distributed to Town Officers by e-mail. The newsletter deals with ethics issues of topical interest and also contains information about the ethics resources the Town has available for Town Officers. These newsletters can help maintain awareness of ethics issues and of the resources available to deal with them. An archive of these newsletters will be made available on the Town website as a continuing resource.

The Board received one complaint concerning a violation of the Code during the 2011-2012 Fiscal Year. After a thorough preliminary investigation, the complaint was dismissed on the grounds that there was no probable cause to believe that a violation of the Code had occurred. We received no requests for advisory opinions. A formal opinion was rendered during the Fiscal Year, a report on which is attached. This opinion was issued in response to a request made in the previous fiscal year.

Town Officers filed four financial disclosure forms covering the 2011-2012 Fiscal Year. This level is significantly lower than the number of filings for prior fiscal years. The Board was pleased to note that there has been a dramatic decline in non-compliant filings, which is some indication that efforts to inform Town Officers about the required filings and provide better instructions for the form are having an effect. The recent ethics newsletter and updated FAQ's posted on the Town website have apparently removed some confusion about whether Town Officers are required to file disclosure statements when they have nothing to report.

The Board has increasing concerns, however, that the current ethics reporting system is not well understood by Town Officers and they may find it too complex to comply with. It also seems clear that some Town officers are not making required reports despite the Board's efforts to make them aware of the applicable requirements. It may be appropriate to ask whether there is a sense on the part of many Town officers that it isn't necessary to file the reports. This calls into question the efficacy of the Town's ethics reporting system and suggests the need for further review and attention.

The Board is exploring the possibility of preparing some short video presentations concerning the Code of Ethics for broadcast on the Town's public access television station. We are also prepared to assist in ethics training sessions by meeting with groups of Town Officers to discuss the requirements of the Code of Ethics and respond to questions about how it applies.

The Board has benefited from the continuation of budgeted funds to support its operations in the amount of \$1,500. Of this allocation \$1,229 of the budgeted funds was used to support the hotline system and to initiate the process of publication of the Board's reports. The Board has consistently operated well within the funds allocated to it. Although we feel that increased funding for the activities or the Board would allow it to operate more effectively, we were pleased with the continuation of our funding level during the difficult budget periods of recent years and have made an effort to use our limited funds in the most cost efficient way possible. In the coming Fiscal Year the Board expects to complete the publication of its Reports, which will involve a one-time increase in expenditures.

After reviewing its operations during the 2011-2012 Fiscal Year, the Board has the following recommendations to the Selectmen: 1) consider forming a study group to consider how to make the reporting system easier for Town officers to comply with 2) continue with training to ensure that the Town's ethics policies, and particularly reporting requirements, are fully understood by all Town employees and elected or appointed officials, 3) explore ways to provide orientation for new employees and elected and appointed officials with respect to the ethical issues attendant upon their service to the Town and to provide them with continuing ethics training during their service.

## **Complaints of Violations of the Code**

The Board received one complaint of a violation of the Code during the 2011-2012 Fiscal Year. After a thorough preliminary investigation, the complaint was dismissed on the grounds that there was no probable cause to believe that a violation of the Code had occurred. Members of the Board also received several informal inquiries about circumstances that might involve violations of the Code. After preliminary discussions with the individuals making such inquiries, however, the persons involved did not feel the need for further review by the Board.

When the Board receives submissions addressed to the full Board that do not seem to meet the requirements of a formal complaint under the Code, it is the practice of the Board to acknowledge the receipt of these communications and respond to those that are not anonymous, providing advice to the senders about the provisions of the Code and the procedures for the filing of a complaint. The Board also reviews these submissions and, where the person submitting or affected by the information is known, they are advised of the date, time and place of the meeting at which a review of the submission will be made. The purpose of this review is to determine whether the submissions contained information that could serve as the basis for a complaint of a violation of the Code. For this purpose, the Board, without further investigation, will assume that all the allegations made in the submission are credible. However, if after carefully considering these allegations, the Board does not find a basis for believing that a violation of the Code may have occurred, it makes a determination that these submissions should not be treated as a formal complaint. We have had no objection to any such determination.

As described elsewhere in this report, the Board has been active in efforts to increase awareness of both the requirements of the Code and the procedures for filing complaints. Due to the high level of cooperation and support that the Board has experienced in connection with these efforts, we are inclined to believe that the low level of complaints is indicative of a high level of ethical behavior in Town Government.

## **Requests for Advisory Opinions**

We received a request for an advisory opinion near the end of the 2010-2011 Fiscal Year, which was considered by the Board during the 2011-2012 Fiscal Year. This request concerned the following issues under the Code of Ethics: 1) whether a property revaluation constitutes a Town action, 2) whether an attorney has a financial interest in a Town action when representing a client with respect to such action, and 3) what constitutes the use of a Town office to influence a Town action. A formal opinion has now been issued in response to this request. A report on the Board's opinion is attached.

In addition, members of the Board and the Board as a whole provided informal guidance to various Town Officers who requested such assistance either at meetings of the Board or on an ex-parte basis.

## **Annual Disclosure Statements**

Requirements of the Code. Section 2.9 of the Code requires Town Officers to file disclosure statements if they have a substantial financial interest in any transaction with the Town totaling \$100 or more. Where an officer has such an interest, the annual disclosure statement is required to:

- be filed within the 30 days following the end of the Fiscal Year
- be filed with the Town Clerk
- be filed on the form prescribed by the Board of Ethics
- be signed under oath
- disclose the position of the filer as a Town Officer
- state the nature of the interest
- state the total amount received from the transaction

The Code does not require that a reminder of these requirements be sent to all Town Officers. However, for many years it has been the practice to send a reminder, signed by the Chairman of the Board of Ethics, to all Town employees and to members of the RTM. This year the initial edition of our newsletter accompanied the reminder.

*Compliance.* By not asking all Town Officers to file a report whether or not they have something to disclose, the Town avoids being buried by a blizzard of paper that contains no significant information. However, by using an exceptions reporting system, the Town cannot be sure that all Town Officers are aware of the requirements. Since Town Officers are only required to file a statement when they have had an interest in a Town transaction, there is no way to know (without independently receiving specific information) whether the failure of a Town Officer to file a statement reflects a deliberate decision not to comply with the Code or is merely due to the absence of any substantial interest in a Town transaction on the part of the Town Officer.

As a result, a review of the statements that are filed does not allow the Board to judge with any certainty the degree of compliance with the Town's financial disclosure. In addition, in an exceptions reporting environment, the requirement that annual disclosure statements must be notarized may serve as a disincentive for reporting, since Town Officers may not have accurate information available to them at the time that they are required to make the filing and may consider that they will be better off not filing a statement with respect to a small interest rather than take the risk that they will be held responsible for making an inaccurate statement under oath.

*Review of Current Year Filings.* The Board's review of the annual disclosure statements that were filed with the Town Clerk this year shows significant improvement in the awareness and understanding of the Code's requirements. Only one of the forms filed this year was not notarized, a reduction from three such filings in the prior year. The number of persons reporting interests in Town transactions increased significantly and the number of non-compliant filings has been reduced dramatically. In particular, it is noted that Town

Officers may have received the impression in the past that they were not required to report indirect interests of siblings. The information currently available in the FAQ's with respect to financial disclosures on the Town website clarifies this requirement and the Board is appreciative of the fact that reporting persons have noticed this clarification.

As in the past, a very low percentage of Town Officers reported interests in transactions with the Town during the 2011-2012 Fiscal Year, and those interests that were reported were for the most part insubstantial. Of the two persons filing with the Town Clerk, one was fully compliant with the Code, while the other failed to provide certain required information with respect to one of two filings. This is a significant improvement over prior years where up to half of the filings were non-compliant.

The following chart summarizes the results of a review of the disclosure forms filed for the 2011-2012 fiscal year as of September 5, 2012:

	RTM	Town Employee	Appointees	Total
Fully Compliant	1	0	2	3
Not Compliant	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<b>Total</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>4</b>

It should be noted that one of the persons who filed to disclose an interest did not disclose the actual amount involved in the transaction, but made a notation to the effect that he had "no knowledge" of the amount at issue. It is not readily apparent, however, why the individual could not have readily obtained the required information or made an estimate of the amount. The Board notes that Code of Ethics requires an amount to be stated.

There has been a significant decline in the number of reporting persons during the last few years, which has been principally related to a decrease in the number of apparently unnecessary filings, in which the filer had indicated that he or she had no interest to declare. As noted in our previous annual reports, the filing of such statements has perplexed the Board and we are pleased to report that this appears to have been eliminated.

With the elimination of these unnecessary filings, however, it has become clear that there is a very low level of reporting in general and this must be attributed in part to the failure of some Town Officers to make the filings that the Code of ethics requires. The Board is aware, for example, of several situations where the Town employs more than one member of a family. The Code requires each of them to file a disclosure statement as to their interest in the other's employment contract, but none have done so. In light of this evident failure, one must question whether other less evident interests might also not have been reported on.

In its last few annual reports, the Board has recommended additional training to improve Town Officers' awareness of both the substance of their disclosure obligations and the fact that failure to file the required statements is a violation of the Code. The Board is increasingly concerned that the absence of additional filings is an indication that the Town's ethics reporting system is not serving its intended purpose. Clearly, it is likely that more than two Town Officers will have financial interests in Town transactions during a fiscal year.

By requiring financial disclosures, the Code assumes that the best way to reassure the public that these interests do not influence Town decisions is to make full disclosure of them. That disclosure does not appear to be taking place. In the last few years, the Board has made efforts to improve the instructions for the annual disclosure form and a higher percentage of the filings received have been in compliance with the requirements of the Code. However, the very low number of forms filed, particularly for this year, suggests that additional training is necessary to ensure that all Town Officers are aware of the obligation to file. While we take satisfaction in the fact that the quality of the filings by those reporting has improved, the miniscule number of filers shows that there is still much more work to be done in order to achieve the robust reporting system that the Code contemplates.

### **Other Activities**

*Coordination with Town Departments.* During the 2011-2012 Fiscal Year, the Board appreciated having the opportunity to consult with and receive support from, the Office of the Selectmen, the Town Clerk, the Law Department, the Department of Human Resources and the Office of the Controller. The active involvement of people at all levels of Town government is essential for the proper functioning of the Board and is, of course, also largely responsible for the high degree of confidence that Greenwich's citizens have in ethical behavior by their Town government.

*Website Redesign and Enhancement.* The Board has continued to work to redesign its web pages and expand the ethics information and materials available to Town Officers and members of the general public on the Town website. Enhancements to the information available on the Town web site included new menus to make information more readily accessible and visible. The enhancements also included revised and expanded reports concerning the Board's prior decisions, updated meeting information and updated information from the Controller's office concerning Town payments during the Fiscal Year. The Board has been pleased to see increasing use of these resources.

*Publication of Reports.* We also took an important step in reaching out to provide information in a more traditional way, initiating the production of paperback and e-book editions of the reports of the Board's activities since its inception. These reports have been prepared over the last few years and arranged were copy edited in preparation for publication in June of 2012. As of the date of this report, the publication process has continued with cover design, layout, production assistance, Library of Congress registration and preparation and review of galleys. Sixty copies of the final reports have been printed and delivered for use by various Town officials.

Registration with the Library of Congress will allow the reports to be properly cataloged by local libraries. In addition, arrangements have also been made for the paperback edition to be made available through the print-on-demand services of Lightning Source, which will supply copies as requested by major wholesalers, who in turn have made it available to traditional and on-line retailers. Wholesale and retail markups and royalties have been set at the minimum amount necessary to obtain their services and provide for the wholesaler warehousing fee. The net result of this is that paperback and e-book editions of the reports are and will be widely available for purchase at a break-even cost. This will facilitate the acquisition of the reports by law firms, researchers and other members of the general public without expense to the Town, while the Town will continue to be able to obtain future copies directly from the publisher at cost.

Steps have also been taken to make the reports available in electronic form. Through a promotional arrangement with Amazon.com, copies are now available for viewing on Kindle readers for free. An electronic version has also been provided to Google Books, so that anyone with Internet access can read the reports for free. The reports available on the Town website have also been updated to reflect the results of the professional copy editing and the formatting services we received in connection with the preparation of the print version. We have also made arrangements through Xerox Corporation's Espresso Machine program for printed copies to be available through their locations in public and university libraries worldwide and have prepared version that can be viewed on iPad, Sony and Nook readers. These have been distributed free of charge to Town officials and will be available shortly to the general public from the respective on-line retailers supporting these systems. The net effect of these efforts has been to make extensive information about the Town's ethics requirements widely available to the public and Town Officers in both print and electronic form.

*The Line on Ethics.* The Board has also initiated a quarterly ethics newsletter, *The Line on Ethics*, which is being distributed to Town Officers by e-mail. The newsletter deals with ethics issues of topical interest and also contains information about the ethics resources the Town has available for Town Officers. An archive of these newsletters is available for download on the Town website and arrangements have been made for individuals who subscribe to be notified when a new edition is available.

*Budgetary Authorization.* During the 2011-2012 Fiscal Year, the Board used \$949 from the funds allocated under the Town's budget to fund its Ethics Hotline. This communications system is independent of the Town's phone system and provides a toll free number with a virtual switchboard, where persons can leave messages on the hotline, be connected directly to the various members of the Board or leave messages in their individual voicemail boxes. The number is (888) 432-2777 and is posted on the Town Website.

The Board's further expenditures consisted of \$280, principally for copy editing services in connection with the publication of the reports regarding its prior activities. The completion of this project will involve additional expenditures in the amount of \$1,535 during the 2012-2013 Fiscal Year.

The current amounts allocated to the Board do not allow the Board to implement all of its program goals. However, we understand the current constraints on the budget. In the

future, the Board looks forward to continued funding to support its outreach and training efforts, as well as to provide funds for contingencies that may arise.

## **Plans and Recommendations**

*Continuing Initiatives.* During the 2011-2012 Fiscal Year, the Board expects to continue to maintain its availability to serve as a resource for Town managers to discuss ethics issues and to provide information about the requirements of the Code as requested by Town Officers and the community at large. As in the past, members of the Board also stand ready to provide further training sessions to assist Town Officers in better understanding the who, why, what, where and when of the disclosure process as well as the ways in which the provisions of the Code affect them generally.

*Recommendations.* Following a review of its activities and experiences in the 2011-2012 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

1. Form a Task Force to Review the Ethics Reporting System. The reporting provisions of the Code of Ethics indicate that requiring disclosure of financial interest is an important Town policy. Implicit in this policy is the assumption that disclosure is a beneficial control process that can be used by the Town in its efforts to ensure compliance with the Code. The current system, however, can be difficult to comply with. Town Officers are required to keep track of all financial interests that they may have in Town transactions throughout each fiscal year and must report on them after the close of the fiscal year. This is understandably difficult, since it can require record keeping and reporting on transactions that are over a year old. The Board believes that a system of reporting that would require disclosure at the time that a Town Officer becomes aware that he or she has an interest in a Town transaction, rather than retroactively at year end, may be a more efficacious system for all concerned. Provided that provisions were made for efficient reporting of the relatively few multiple small transactions that occur under a single contract or arrangement, we believe that this real time system would be both easier for Town Officers to comply with and provide more timely and useful information to the public. As noted above, there are also questions as to whether the requirement that statements be filed under oath is efficacious. The Board believes that other less onerous mechanisms can be used to ensure that the reports that are filed are accurate. However, the Board is not in a position to implementing these changes by itself. Any change from an annual reporting system to the real time reporting system or decision to drop the requirement that statements must be filed under oath, would require a technical amendment to the Code of Ethics. It would be appropriate for the Selectmen to commission a group of appropriate persons to review this question and make recommendations on such technical amendments. The Board would be happy to provide this group with assistance and to assist the



Selectmen and the RTM with the process of reviewing and implementing any technical amendments such a group might propose.

2. Continue Training Efforts. Training is an important component of any ethics program. The Board encourages the Department of Human Resources to continue its efforts to ensure that the recent changes made by the Town-wide Ethics Policy are fully understood by all Town employees. In addition, the Board encourages the Town to pursue additional training for Town employees with respect to the requirements of the Code of Ethics in general, and in particular as to reporting requirements.
3. Make Further Enhancements to the Town's Orientation and Training Programs for Elected and Appointed Officials. The Board feels that additional training and orientation for elected and appointed officials would be useful in helping them to understand more fully the provisions of the Code that are applicable to them. The Town's elected and appointed officials do not have the benefit of the training that is routinely provided to Town employees. There are considerable challenges involved in training elected and appointed officials, since many of them do not receive compensation for their service and have limited time available. These officials play an important role in Town government, however, and the public has an interest in making sure that they are aware of and understand the Town's ethical requirements. We would be pleased to further explore ways to provide them with additional resources and training.

The Board invites comments from Town Officers or members of the general public on both its activities and plans and recommendations. Interested persons may request to address the Board at any of its public meetings or speak to any member of the Board personally by calling (888) 432 2777.

**September 15, 2012**

## **Advisory Opinion No. 2012 – 01**

**Date:** December 13, 2011

**Topics:** Indirect Interest; Exerting Influence; Action by Town; Attorneys; Town Attorney; Board of Assessment Appeals; Tax Assessor

**Code Sections:** Sections 2 (a) (1) and (2), Section 4

### **Statement of Facts:**

An attorney who practices with a law firm based in Greenwich is a member of the Board of Estimate and Taxation (“BET”). As elected officials of the Town, members of the BET are Town Officers subject to the requirements of the Code of Ethics. The BET has general responsibility for the proper administration of the financial affairs of the Town. Its principal functions are to set the mill rate for the Town’s real estate tax and to issue the annual Town budget for consideration by the RTM. The Board also acts on requests for additional appropriations, transfers or allotments made during the course of the fiscal year.

In order to avoid the possibility that the attorney might be called on to address issues on the BET that involve matters in which the firm is engaged, it is the policy of the attorney’s firm not to accept retainers from clients with respect to matters that may be expected to come before the Board of Estimate and Taxation.

The attorney is currently handling an appeal of a tax assessment for a client, which has involved several steps. The tax assessment was made on October 1, 2010 and a notice of the change in assessment was sent to the taxpayer in January of 2011. Following receipt of the notice, the attorney and client had an informal conference with the Town’s revaluation consultant. The purpose of this conference was to allow the consultant to explain the basis of the assessment and the taxpayer to provide additional information regarding the property and point out items that the consultant may have overlooked or misunderstood.

The revaluation consultant provides services under a contract that was signed on April 7, 2010 by the Town Assessor, who has ultimate decision-making responsibility for all tax assessments. The contract, which was entered into following Town procurement requirements, provided for the consultant to make recommendations to the Assessor with respect to an overall revaluation process conducted in connection with the October 1, 2010 tax assessment. Follow up conferences with taxpayers are a part of the service provided under the contract. Therefore, the consultant’s compensation in connection with these conferences is based upon a contract agreed to before any revaluation recommendations were made with respect to any property. While the general budget targets established by the BET

may have some effect on the budget of the Tax Assessor's office, the BET does not have any role in the hiring of the revaluation consultant.

After the informal conference, the consultant made a report to the Assessor that resulted in a modification of the assessment of the taxpayer's property by the Assessor. The taxpayer objected to the revised assessment and filed an appeal with the Board of Assessment Appeals ("BAA"). The Board of Assessment Appeals is an independent Town board whose members are elected by the voters of the Town of Greenwich. Currently the members of this Board receive an annual stipend of approximately \$6,000 per year. The BET appropriates the compensation for the BAA each year and typically adjusts the stipend in accordance with percentages established in its general budgetary guidelines.

After the BAA rendered its decision, the taxpayer filed an action appealing the assessment in the Superior Court. The Superior Court is part of the Judicial Branch of the State of Connecticut and receives no funding from the Town. However, the Town Attorney represents the Town in connection with such appeals. The staff attorney assigned to the matter has requested discovery information and the attorney is currently in the process of working with the client to provide it. One outcome of the challenge may be a settlement based upon the Town Attorney's recommendation.

Currently, the BET does not review or approve settlements in such appeals. As with the Tax Assessor's office, while the BET establishes overall guidelines for Town expenditures, it does not participate directly in establishing the budget for the Department of Law or play a role in selecting or determining the salary of the Town Attorney. Nevertheless, the BET does review the annual budget for the Department of Law and has from time to time raised issues about the expenditure levels in specific areas. In doing so, it reviews the overall salary levels of the attorneys in the department. For members of the Department other than the Town Attorney, these salaries are a function of the union contract and are determined solely by the position held and years of service.

### **Questions Presented:**

Is a change in the valuation of property an "action" taken by the Town?

Does an attorney's representation of a taxpayer in connection with a revaluation of property give the attorney a financial interest in the revaluation?

Where an attorney is also a Town Officer, does representation of a client with respect to a Town action represent a use of office to influence the action?

### **Discussion and Conclusions:**

This request concerns the application of Section 4 of the Code of Ethics, which reads as follows:

“No Town Officer having a substantial interest in any transaction or action to be taken by the Town shall use his office to exert influence or to vote on such action or transaction.”

#### *Change of Valuation as a Town Action*

Revaluations of properties are implemented as part of the legal responsibilities of the Assessor as a Town Official. Any revaluation, or change in revaluation, involves an action taken by the Town. A taxpayer's financial interest in a revaluation carries through to any actions taken by the Assessor or the Board of Assessment Appeals and to any actions taken by the Town in settlement of an appeal of the revaluation. Therefore, there is a Town action that the attorney becomes involved with by representing a taxpayer in this case.

#### *The Attorney's Financial Interest*

If an attorney's firm receives payment for representing a client in connection with a Town action, the attorney will have a financial interest in the Town action arising from the firm's fees, which create a financial connection between the representation and the Town action. This connection between the Town action and the retention of the law firm is illustrated by two prior opinions of the Board:

In Advisory Opinion 98-03, the Board was asked whether a Town Commissioner had a substantial financial interest in a matter due to the fact that members of the Commissioner's law firm were representing a client in the matter. The Board confirmed that the involvement of the law firm in the matter gave the member a financial interest and indicated that the Commissioner should refrain from any involvement in the matter.

Similarly, in Advisory Opinion No. 05-01, the Board noted that there was a possibility that conflicts could arise if an attorney who represented clients in administrative hearings before the Board of Education served as a member of the Claims Committee and Education Committee of the RTM. The Board reminded the attorney, however, that the Code could not prohibit conflicts from arising and required only that Town Officers recuse themselves from participation in matters in which they had an interest. Noting that many Town Officers were professionals serving as volunteers, including doctors, lawyers, architects, engineers and accountants, the Board stressed that “those with special skills are not precluded from public service because of what might happen”.

It is possible that the engagement of a law firm on an unrelated matter could result in a violation of the Code because of some express or tacit understanding between the Town officer and the client that the engagement is connected to the Town action. However, the Board does not automatically assume that an interest in a Town action arises from legal representation on prior or unrelated matters. Thus, in Decision No. 89-03, the Board did not express concern when a complaint was lodged against an attorney. Since there was no showing that the representation of the client was related to the Town action, the Board would not find that a violation of the Code existed based solely on the fact that a member of the Board was an attorney who represented an adjoining property owner.

Even where an attorney represents a client directly in connection with the Town action, as in the matter at hand, it is important to bear in mind that the financial interest that the Code is

concerned with is the Town Officer's financial interest, not the client's. A client may have no evident financial interest in the Town action that they have hired an attorney to address, while the attorney may have a financial interest in the matter. Conversely, there may be circumstances where an attorney, acting on a pro-bono matter, has no financial interest in a matter that the client has a significant financial interest in.

Here, the attorney has two financial interests. One, averse to the client's, is the interest of a taxpayer in maintaining the valuations of properties in the Town. As an interest "common to the other citizens of the Town", however, this interest is excluded from the definition of "substantial financial interest" under Section 2 (a) (2) of the Code.

The other financial interest that the attorney has here is in the fee being received in connection with the matter. It is conceivable that in a very large law firm, the impact of a small fee on a particular member would only be nominal, and thus also be excluded from consideration under Section 2 (a) (2). In this case, however, it is understood that the Town Officer's interest in the fee will be more than nominal. Accordingly, the Board affirms the conclusion reached by the Town Officer requesting this opinion that the representation of a client in connection with an appeal of a property valuation gives the Town Officer a substantial financial interest in the related Town action.

### *Undue Influence*

As the Board has pointed out in Advisory Opinion No. 05-01 and on numerous other occasions, the Code of Ethics does not prohibit Town Officers from having an interest in Town actions. Rather it prohibits Town Officers from using a Town office to exert influence on the action. If all elected and appointed officials were required to avoid any employment, investment or other financial relationship that might conceivably result in an ethical conflict, no one would be eligible to serve as an elected or appointed official of the Town.

The chilling effect that such a policy would have is recognized in the Code of Ethics. Rather than prohibiting Town Officers from having potential conflicts—a circumstance that would disqualify almost everyone from participating in Town government—the Code requires that Town Officers remove themselves from influencing any actions in which they find that they have an interest.

Reasonable steps to avoid potential conflicts are appropriate and in the public interest. In some cases it can be anticipated that frequent conflicts will require an individual to be recused from matters so frequently as to substantially impair the individual's ability to serve effectively as a Town Officer. In others, a Town Officer may need to decline certain engagements or transactions in order not to create the appearance of an improper interest.

To anticipate remote possibilities is an excess of caution, however. In the Town's representative system of government, numerous Town Officers will have professional relationships that may give rise to interests in Town matters. Unanticipated conflicts will arise from time to time and must be dealt with as they present themselves.

While it may seem obvious that an attorney seeks to influence a Town action when representing a client affected by the Town action, it is important to examine whether the effort to influence the action makes use of the attorney's position as a Town officer. What the Board must consider carefully is whether the persons responsible for the Town action are

likely to be influenced by more than just the attorney's knowledge of the law and rhetorical skill.

In the facts presented to the Board in this case, it seems clear that the attorney's role on the BET is far removed from anything that would influence the Town's valuation consultant, the Board of Assessment Appeals, the Assessor, the Town Attorney or the members of the Department of Law. While BET members participate in setting broad financial goals for the Town and review Departmental budgets for conformity with those goals, they do not play a direct role in the revaluation process, the selection or compensation of Town consultants, the selection of any of the Town officials involved in the valuation or appeals process or the development of the budgets for their specific departments.

In requesting this opinion, the BET member took pains to point out that the Town Attorney sometimes appears before the BET to comment on the legality of various contracts or financial arrangements that the BET is reviewing. However, the Town Attorney, unlike the Controller, does not report to the BET. Thus, while a member of the BET might normally be expected to exercise a certain amount of influence over members of the Controller's office, members of the BET have no such special influence over the office of the Town Attorney. Moreover, the Town Attorney is not required to seek input from the BET with respect to settlements of Town legal actions.

Nevertheless, since the BET does review the annual budget for the Department of Law, the Board recommends that the attorney should refrain from any involvement on any BET matters that could have a direct impact on the Town Attorney or the Department of Law until the revaluation matter has been resolved. Since the appeal of the tax assessment, the BET has not considered any matters relating to the Town Attorney's office and the Board has been advised that the attorney will promptly advise the Chair of the BET of an interest in the revaluation matter if it has not been resolved before any such matters are considered by the BET.

In Advisory Opinion No.09-04, the Board proposed guidelines to provide a safe harbor for Town Officers in connection with matters in which they might have a direct or indirect financial interest. The Board notes approvingly that by advising the Chair of the BET of his financial interest, the attorney would allow the BET to follow the procedures in Advisory Opinion No 09-04, under which the attorney could be recused from discussing or voting on issues of substantial economic interest to the Town Attorney's office.

The Board is mindful that attorneys have an ethical responsibility to their clients to continue their representation until a matter that they have been retained to handle has been concluded. The Board appreciates the fact that the attorney has evidenced considerable sensitivity to potential conflicts of interest and the appearance of impropriety in this revaluation matter. We are confident that the attorney requesting this opinion, the BET and the Town Attorney will take all appropriate steps to avoid any conflict of interest in this matter.

**See Related: D89-03, A98-03, A05-01, A09-04**

